40-511
140-589

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1446.

THE UNITED STATES, APPELLANT,

vs.

MATILDA C. ROGERS, ADMINISTRATRIX OF THE ESTATE OF ALEXANDER ROGERS, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED OCTOBER 17, 1890.

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1 In the circuit court of the United States for the district of Oregon, April term, 1889.

Be it remembered that on the 30 day of August, 1889, there was duly filed in the circuit court of the United States for the district of Oregon a bill of complaint, in words and figures as follows, to wit:

2 1633.

In the circuit court of the United States for the district of Oregon.

To the honorable the judges of the circuit court of the United States for the district of Oregon:

Comes now your orator, W. H. H. Miller, the Attorney-General of the United States of America, and in virtue of the provisions of an act of the Congress of the United States entitled "An act providing in certain cases for the forfeiture of wagon-road grants in the State of Oregon," approved March 2, 1889, exhibits and presents this bill of complaint in behalf of the United States and against Matilda C. Rogers, administratrix of the estate of Alexander Rogers, deceased.

3 I. And thereupon your orator shows to your honors that on the 25th day of February, A. D. 1867, the Congress of the United States passed, and the President duly approved, an act granting to the State of Oregon to aid in the construction of a wagon road from Dalles City, on the Columbia River, by way of Camp Watson, Canyon City, Mormon or Humboldt Basin, to a point on Snake River opposite Fort Boise, in Idaho Territory, the alternate sections of public land, designated by odd numbers, to the extent of three sections on each side of said road; that said act provided that the lands granted should be exclusively applied to the construction of the road and to no other purpose; that they should be disposed of only as fast as the work upon the road progressed; that lands lying within the limit fixed by said act, and theretofore reserved or appropriated, should be reserved from the operation of said act except so far as it might be necessary to locate the road over the same, in which case a right of way to the width of one hundred feet was granted; that the said act further provided that the grant should not embrace mineral lands of the United States; that the land granted thereby to the State of Oregon should be disposed of by the legislature thereof for the uses and purposes therein set forth and for no other purposes; that the road should be and remain a public highway for the use of the United States, free from toll or other charges upon the transportation of any property, troops, or mails of the United States, and also that the road should be constructed with such width, gradation, and bridges as to permit of its regular use as a wagon road and in such other special manner as the State of Oregon might prescribe; that the said act also authorized the State of Oregon to locate and use in the construction of said road an additional amount of the public lands not previously reserved to the United States nor otherwise disposed of, and not exceeding ten miles in distance from the general route of the road, and equal to the amount reserved from the operation of the act, said lieu lands to be selected in alternate odd sections as provided therein; that said act further provided that the lands thereby granted to the State

of Oregon should be disposed of only in the following manner, that is to say; when the governor of the State should certify to the Secretary of the Interior that ten cotermin'us miles of said road were completed, then a quantity of land granted by the act, not exceeding thirty sections, might be sold, and so on from time to time until said road should be completed, and if the road was not completed within five years, no further sales should be made, and the lands remaining unsold should revert to the United States, and also that the surveyor-general of the district of Oregon should cause the lands granted by the act to be surveyed at the earliest practicable period after the said State should have enacted the necessary legislation to carry the said act of Congress into effect.

II. And your orator further shows to your honors that on the 20th day of October, A. D. 1868, the legislative assembly of the State of Oregon passed, and the governor approved, an act entitled "An act dedicating certain lands to Dalles Military Road Company," which act, after setting forth the act of Congress aforesaid, granted to Dalles Military Road Company all lands, rights of way, rights, privileges, and immunities granted or pledged to the State of Oregon by said act of Congress aforesaid, for the purpose of aiding said Dalles Military Road Company in constructing the road mentioned and described in said act of Congress aforesaid, and upon the conditions and immunities therein prescribed. And further, that the said act of the said legislative assembly granted and pledged to the said Dalles Military Road Company all moneys, lands, rights, privileges, and immunities which might thereafter be granted to the State of Oregon to aid in the construction of said road, for the purposes and upon the conditions mentioned in said act of Congress, or which might be mentioned in any further grant of money or land to aid in constructing said road; and said act of the legislative assembly of the State of Oregon author-
4 ized the said Dalles Military Road Company to locate, subject to the approval of the governor of the State of Oregon, the land within the ten-mile limit prescribed by said act of Congress aforesaid, in lieu of lands reserved to or disposed of by the United States, and lying and being within the limits of the grant as described in the first section of the act of Congress aforesaid.

III. And your orator further shows to your honors that the State of Oregon never at any time passed any laws whatsoever for the special purpose of carrying the act of Congress aforesaid into effect, but long before the passage and approval of said act of Congress, and on the 14th day of October, A. D. 1862, the legislative assembly of the State of Oregon passed an act entitled "An act providing for private incorporations and the appropriation of private property therefor," which was approved by the governor of Oregon on said day last aforesaid, which act provided, among other things, that any road, other than a railway, constructed by a corporation formed under the said law, should be cleared of standing timber for thirty feet in width; that said road should have a track in the center not less than sixteen feet in width finished and kept in good traveling condition, except when the cut of said road is six feet or more deep on either side, in which case said road need not be more than ten feet wide, with turn-outs of sixteen feet in width for every quarter of a mile of said narrow track. And said act of the legislative assembly of Oregon last aforesaid also provided that all streams or other waters upon the line

of such roads should be safely and securely bridged, except where the county court of the county wherein the line of such road may cross such streams or other water, or if such stream or other water form the boundary between two counties, then the county court of either of said counties might authorize the corporation to place a ferry-boat upon such stream or other water, to be kept and run for such toll as the county court might prescribe and in the manner required of ferries established under the general statutes in relation to ferries; or except where such county court might authorize such corporation to connect their road with a ferry at the date of said act or thereafter established over such stream or other water under the general statutes in relation to ferries, and that said provisions of said act of the legislative assembly of the State of Oregon last aforesaid have been in force at all times since the 14th day of October, 1862, and still remain in force.

IV. And your orator further shows to your honors that The Dalles Military Road Company is a private corporation purporting to have been incorporated on the 30th day of March, A. D. 1868, under and by virtue of the general laws of the State of Oregon providing for private incorporations and the appropriation of private property therefor; that the enterprise and business in which the said corporation proposed to engage was the location and construction of a clay road from Dalles City, in the county of Wasco, Oregon, by way of Camp Watson and Canyon City to a point on Snake River opposite Fort Boise, in Idaho Territory, about two miles below the mouth of Owyhee River; that James K. Kelly, N. H. Gates, and Orlando Humason were the incorporators thereof.

That on the 11th day of January, A. D. 1871, the Dalles Military Wagon Road Company, by Orlando Humason, Victor Trevitt, O. S. Savage, O. W. Weaver, and B. W. Mitchell, the then directors thereof, in pursuance of the unanimous vote of the stockholders thereof, made and filed supplementary articles of incorporation; that said supplementary articles of incorporation contained but one article, which is as follows:

"The enterprise and business in which the said corporation proposes to engage, in addition to the location and construction of a clay road as provided in the original articles of incorporation, is to accept and receive any and all grants of land and other things of value from the United States and the State of Oregon, and to sell and convey and to purchase and to hold land and other property which the directors of said corporation may deem necessary and convenient for the interests thereof, and to engage in any business incident to and connected with receiving any such grant, and in selling, conveying, purchasing, and holding any land or property that may come into the possession of said company, also to establish and keep a toll road on any part of the road belonging to said company."

That said private corporation is still in being, and that the officers thereof are James K. Kelly, president, and C. N. Thornbury, secretary.

V. And your orator further shows to your honors that on the first day of January, A. D. 1869, and on divers other day' between said day and the 23d day of June, 1869, the officers, stockholders, and agents of the Dalles Military Road Company, and other persons acting in their interest and in the interest of said company, falsely and fraudulently represented to George L. Woods, then the governor of Oregon, that said road had been con-

structed as by law required; they, the said officers, stockholders, agents, and representatives and other persons aforesaid, then and there well knowing that said representations were false and that the said road had not been constructed in any respect according to law or at all; that they and each of them made the said false and fraudulent representation for the sole and only purpose of fraudulently procuring from the said George L. Woods, as governor of the State of Oregon, a certificate declaring that the said road had been constructed in accordance with the act of Congress aforesaid approved February 25, 1867, and of the act of the legislative assembly aforesaid approved February 20, A. D. 1868.

That the said George L. Woods, then governor of Oregon, in consequence of said false and fraudulent representations made as aforesaid by the persons aforesaid, made and issued the following certificate:

EXECUTIVE OFFICE,
Salem, Oregon, June 23, 1869.

I, George L. Woods, governor of the State of Oregon, do hereby certify that this plat or map of the Dalles military road has been duly filed in my office by the Dalles Military Road Company, and shows, in connection with the public surveys, as far as said public surveys are completed, the location of the line of route as actually surveyed and upon which their road is constructed in accordance with the requirements of an act of Congress approved February 25, 1867, entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boisé, on Snake River," and with the act of the legislative assembly of the State of Oregon approved October 20, 1868, entitled "An act donating certain lands to the Dalles Military Road Company." I further certify that I have made a careful examination of said road since its completion, and that the same is built in all respects as required by the said above-recited acts, and that said road is accepted.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Oregon.

Done at Salem, Oregon, June 23, 1869.

GEO. L. WOODS.

Attest: SAMUEL E. MAY,
[SEAL.] *Secretary of State.*

6 VI. And your orator further shows to your honors that it was not and is not true that the Dalles Military Road Company had at any time whatsoever constructed, or caused to be constructed, a road upon any line of route located or surveyed by said company or by any other corporation, person, or persons, anywhere within the limits of the grant of land provided for in the act of Congress aforesaid, or at all, and this the said George L. Woods, governor aforesaid, then and there well knew, and that it was not and is not true that the said governor made a careful, or any, examination of any road constructed or owned by the Dalles Military Road Company.

VII. And your orator further shows to your honors that said certificate was procured by the said Dalles Military Road Company, by and through the false and fraudulent representations aforesaid by the officers,

stockholders, agents, and persons aforesaid, in order to enableit falsely and fraudulently to obtain possession and control of the lands lying within the limits of the grant of land provided for in the act of Congress aforesaid, and that the acceptance of said pretended road by the governor aforesaid was a fraud upon the United States of America.

VIII. And your orator further shows to your honors that the said road never was built, graded, bridged, cleared, or constructed either in whole or in part so as to be a public highway, or so as to permit of the transportation of any property, troops, or mails of the United States over the same, and was not and never has been maintained as a public highway by either or any of the defendants herein, or any person or persons claiming any interest in the lands embraced within the limits provided for by the said act of Congress.

IX. And your orator further shows to your honors that notwithstanding the provisions of the act of Congress declaring that the lands granted thereby should be exclusively applied to the construction of the road and to no other purpose, neither the said lands, nor the proceeds thereof, have ever been exclusively, or at all, applied to the construction of the road, or any part thereof, or to the construction of any bridges thereon, or the establishment of any ferries on any streams along the line of the road or any part thereof.

X. And your orator further shows to your honors that the lands granted by the said act of Congress were not and have not been disposed of by the State of Oregon, or by the legislative assembly thereof, for the purposes expressed in said act of Congress, or any thereof.

XI. And your orator further shows to your honors that on the eighteenth day of June, A. D. 1874, the Congress of the United States passed and the President duly approved an act which, after reciting that certain lands had theretofore by acts of Congress been granted to the State of Oregon to aid in the construction of certain military wagon roads in said State, and that there was no existing law providing for the issuing of formal patents for said lands, provided as follows:

"That in all cases when the roads in aid of the construction of which said lands were granted are shown by the certificate of the governor of the State of Oregon, as in said acts provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall, by public act, have transferred its interests in said lands to any corporation or corporations, in which case the patents shall issue from the General Land Office to such corporation or corporations upon the payment of the necessary expenses thereof: Provided, That this shall not be construed to revive any land grant already expired, nor to create any new rights of any kind, except to provide for issuing patents for lands to which the State is already entitled."

7 XII. And your orator further shows to your honors that on the 19th day of June, A. D. 1876, the President of the United States, being deceived, misled, and imposed upon by the false and fraudulent certificates hereinabove set forth, issued to the defendant, The Dalles Military Road Company, a patent for 126,910 23-100 acres of land included in the grants made or intended to be made by said acts of Congress, which patent was recorded January 14, 1887, in volume K of deeds of Wasco County, Oregon, on pages 452 to 469.

XIII. And your orator further shows to your honors that on the 31st day of May, A. D. 1876, The Dalles Military Road Company, by its then president, P. J. Martin, and its then secretary, C. N. Thornbury, pursuant to a resolution of the board of directors thereof passed on the day last aforesaid, made, executed, and delivered to Edward Martin a deed, a certified copy of which is hereunto attached, marked Exhibit A, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 31st day of May, A. D. 1876, and was recorded in record of deeds for Wasco County, Oregon, in volume E, on pages 435, 436, 437, and 438.

That on the 21st day of March, A. D. 1882, Eleanor Martin, as the guardian of the person and estates of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minor heirs of Edward Martin, deceased, under an order and license of the county court of Wasco County, Oregon, made, executed, and delivered to Peter Donahue and James Phelan a deed, a certified copy of which is hereunto attached, marked Exhibit B, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 5th day of April, A. D. 1882, and was recorded in record of deeds for Wasco County, Oregon, in volume H, on pages 82, 83, and 84.

That on the 3rd day of August, A. D. 1882, James Phelan and Alice, his wife, made, executed, and delivered to Peter Donahue a deed, a certified copy of which is hereto attached, marked Exhibit C, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 13th day of September, A. D. 1882, and was recorded in record of deeds for Wasco County, Oregon, in volume H, on pages 275, 276, and 277.

That on the 4th day of August, A. D. 1884, Peter Donahue and Annie, his wife, D. V. B. Henaire and Mary, his wife, Eleanor Martin, T. J. Martin and Margaret A., his wife, James V. Martin, Thomas V. Martin and Ada B., his wife, Edward Martin, Barton L. Walker and Genevieve E., his wife, made, executed, and delivered to the Eastern Oregon Land Company, a private incorporation, a deed, a certified copy of which is hereunto attached, marked Exhibit D, and made a part hereof; and that said deed was filed for record in the office of the county clerk of Wasco County, Oregon, on the 15th day of October, A. D. 1884, at 10.30 o'clock a. m., and was recorded in the record of deeds of Wasco County, Oregon, in volume J, on pages 119, 120, 121, 122, 123, and 124.

That each and every of said deeds conveyed the lands in bulk, and purported to grant to the respective grantees all the lands lying and being in the State of Oregon, granted or intended to be granted to the State of Oregon by the act of Congress first hereinabove pleaded and granted or intended to be granted by the State of Oregon to The Dalles Military Road Company by the act of the legislative assembly first hereinbefore pleaded, and that the substantive parts of both of said acts are recited in all the said deeds and expressly made parts of each thereof.

8 XIV. And your orator further shows to your honors, that on the 8th day of July, A. D. 1889, the Eastern Oregon Land Company executed and delivered to the defendant, Matilda C. Rogers, administratrix of the estate of Alexander Rogers, deceased, in trust for said estate, and the heirs of said deceased, pursuant to a contract and sale made to and with

said Alexander Rogers in his life-time, a deed purporting to convey to the defendant, in trust as aforesaid, all of section twenty-one; the north half and southeast quarter of section twenty-three; all of section twenty-five; the northwest quarter and southeast quarter of section twenty-seven; and the northwest quarter; and the northwest quarter of section thirty-five, all in township seven south, range seventeen east, of the Willamette meridian; and all of section three, in township eight south, range seventeen east, of the Willamette meridian, containing $2,881\frac{98}{100}$ acres, situate in Wasco County, Oregon, which deed is recorded on pages 314 and 315, in volume O, of the record of deeds in Wasco County, Oregon, a copy of which is hereto annexed and made part of this bill of complaint.

That the lands described in and by said deed so made and delivered to the defendant, Matilda C. Rogers, administratrix, are part and parcel of the lands granted by the act of Congress first hereinabove pleaded.

That the deceased, Alexander Rogers, in pursuance of contract with said Eastern Oregon Land Company, entered upon said lands in his life-time, claiming the same adversely to the United States; and the defendant, under the deed last above described, claims to own and hold all the lands in said deed described adversely to the United States, in trust for the estate and heirs of Alexander Rogers, deceased.

9 XV. And your orator further shows to your honors that said Alexander Rogers, before contracting to purchase said land, and the defendant, Matilda C. Rogers, when she took said deed, and each and every of the grantors and grantees mentioned in the deeds hereinabove described, at the time of the execution and delivery of the deeds aforesaid, and at the time of the accruing of any of their pretended interest in said lands aforesaid, had full knowledge that the road provided for by the act of Congress first aforesaid had not at any time been constructed and maintained as required by said act of Congress, and by the laws of the State of Oregon, so as to be in any sense whatsoever a public highway, or so that it could be used by the United States or by any of the citizens or residents thereof as a public highway, or so that the United States could transport its property, troops, or mails over the same, and also had full knowledge that no grades had been established or constructed upon said road or any part thereof; that no clearing had been done on any part thereof, no bridges built over any streams on the line thereof, no cuts made and no turn-outs constructed anywhere on said line of road by The Dalles Military Road Company or by any of the grantors or grantees mentioned and described in any of the said deeds aforesaid; and that no ferries had been built or maintained over any streams on the line of said road; and had full knowledge that said road was not begun nor completed within five years from the date of the passage of the act of Congress first aforesaid, and that it had never been begun, constructed, or maintained, and that each and every of said defendants well knew that the statements made in the certificate of the governor of Oregon hereinabove set forth were false; that the governor did not at any time whatsoever examine the road referred to in his said certificate, and that said certificate had been procured by false and fraudulent representations as aforesaid, and that the patents aforesaid were procured to be issued upon said false and fraudulently procured certificates.

10 *Prayer.*

Your orator therefore prays that the patent described in this bill of complaint be declared fraudulent and void; that the certificate described in this bill of complaint be declared fraudulent and void; that the deeds described in this bill of complaint be declared fraudulent and void, and that the land therein described be restored to the public domain; that the United States may have such other and further relief as to equity seemeth meet; that the United States writ of subpœna may issue requiring the defendant to appear in this honorable court under certain pains and penalties therein prescribed and answer the foregoing bill of complaint; and that the defendants pay the costs, expenses, and disbursements of this suit.

O. W. CHAPMAN,
Acting Attorney-General.
LEWIS L. MCARTHUR,
U. S. Attorney for Oregon.
WILLIAM CAREY JOHNSON,
Special Assistant U. S. Attorney.

11 EXHIBIT A.

Certified copy of deed. *Dalles Military Road Company to Edward Martin. Dated May 31, 1876.*

[Filed for record on the 31st day of May, A. D. 1876.]

This indenture, made and entered into this 31st day of May, A. D. 1876, between The Dalles Military Road Company, a corporation duly incorporated, organized, and existing under the laws of the State of Oregon, having its principal office and place of business at Dalles City, Wasco County, State of Oregon, the party of the first part, and Edward Martin, of the city and county of San Francisco, State of California, the party of the second part, witnesseth: That the said party of the first part, The Dalles Military Road Company, a corporation as aforesaid, for the sum of $125,000, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, released and conveyed, and by these presents it does grant, bargain, sell, release, and convey unto the said party of the second part, his heirs and assigns, all the lands lying and being in the State of Oregon, granted or intended to be granted to said State by act of Congress approved February 25, A. D. 1867, entitle' "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," and the right to a patent or patents for said lands granted to said party of the first part by act of Congress approved June 18, 1874, entitled "An act to authorize the issuance of patents for lands granted to the State of Oregon in certain cases," which said lands were granted or intended to be granted by the State of Oregon to the said Dalles Military Road Company by an act of the legislative assembly of said State of Oregon approved October 20, 1868, entitled "An act donating certain lands to The Dalles Military Road Company," which said several acts are hereby made part hereof, and all the right, title,

and interest acquired or to be acquired by the party of the first part under the said several acts hereinbefore referred to, or either to them, and also all future right, title, interest, claim, property, and demand which the party of the first part may at any time hereafter acquire to said lands, or any part thereof, or to any lands or to any patents or patent therefor by virtue of said acts of Congress or either of them, and said act of the legislative assembly of the State of Oregon, whether said lands are surveyed or unsurveyed, by virtue of any further compliance or any preceding compliance with the requirements of said acts or otherwise, subject to the payment by said party of the second part of whatever may be due the United States for entering and patenting said lands. It being the intention of the party of the first part to convey, and it does hereby convey, to the party of the second part the said lands, and all of the right, title, and interest acquired by said party of the first part under said acts, or either of them, in said lands, or any part thereof, or any lands, being all the interest in and to the lands and premises hereinbefore described, together with any and all further interest that it may hereafter acquire or now possess by virtue of any further compliance with all or any of said several acts referred to, reserving and excepting from this conveyance, however, all sales of land heretofore made by the party of the first part.

The said party of the first part hereby covenants and agrees with the party of the second part that it will at any time when desired by said party of the second part to him, his heirs and assigns, any further conveyance and assurance of title to the lands aforesaid and every part thereof, and said party of the first part covenants and agrees with said party of the second part to keep up its corporate organization, and to do every act and thing necessary and requisite to *to* perfect the title to all the lands included in the grant aforesaid.

12 To have and to hold the lands hereby granted and every part and parcel thereof unto the *the* said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part has caused its corporate seal to be affixed to these presents and the same to be signed by its president and secretary by resolution of the board of directors thereof duly passed to that effect at Dalles City, Wasco County, State of Oregon, this 31st day of May, A. D. 1876.

P. J. MARTIN,
President D. M. R. Co.
C. N. THORNBURY,
Secretary D. M. R. Co.

And witness the seal thereof—
[SEAL.]

Signed, sealed, and delivered in the presence of—
BEN. KORTEN.
J. B. CONDON.

STATE OF OREGON, *County of Wasco:*

On the 31st day of May, A. D. 1876, before the undersigned, a notary public in and for Wasco County, State of Oregon, came the above-named P. J. Martin, president of The Dalles Military Road Company, and C. N. Thornbury, secretary of said company, both of whom are well known to

me to be the persons described in and who executed the foregoing conveyance, and the said P. J. Martin acknowledged to me that he had executed the said conveyance as president of the said Dalles Military Road Company, for the objects and purposes therein stated, in compliance with a resolution passed by the board of directors of said company on the 30th day of May, A. D. 1876, and the said C. N. Thornbury acknowledged to me that he had executed the said conveyance for the purposes therein set forth and in attestation thereto affixed to said conveyance the corporate seal of the said Dalles Military Road Company as secretary thereof, in compliance with a resolution of the board of directors of said company.

In witness whereof I have hereunto set my hand and affixed my notarial seal on the day and year first above written in this certificate.

[SEAL.] JAMES B. CONDON,
Notary Public, Oregon.

STATE OF OREGON, *County of Wasco, ss:*

I, George H. Thompson, county clerk in and for Wasco County, and ex-officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from The Dalles Military Road Company to Edward Martin, bearing date May 31, 1876, as the same now appears of record at pages 435, 436, 437, and 438, volume E, record of deeds for Wasco County, Oregon, now in my office and custody. And that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 2d day of September, 1887.

GEO. H. THOMPSON,
Clerk.

[SEAL.] By J. M. HUNTINGTON,
Deputy Clerk.

13 EXHIBIT B.

Certified copy of deed, Eleanor Martin, guardian, etc., to Peter Donahue and James Phelan, dated March 21, 1882.

[Filed for record on April 5, 1882.]

This indenture, made the 21st day of March, A. D. 1882, by and between Eleanor Martin, the duly appointed and qualified guardian of the persons and estates of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, party of the first part, and Peter Donahue and James Phelan, of the city of San Francisco, State of California, parties of the second part, witnesseth:

That whereas on the 3d day of January, A. D. 1882, the county court of Wasco County, in the State of Oregon, made an order and license of sale, authorizing the said party of the first part to sell certain real estate of the said minors, situate in the counties of Wasco, Grant, and Baker, in the State of Oregon, and particularly described in the said order and license of sale, and which said order and license of sale, now on file and of record in the said county court, Wasco County, are hereby referred to and made a part of this indenture; and

Whereas under and by virtue of the said order and license of sale, and pursuant to legal notices given thereof, the said party of the first part, on

the 6th day of February, A. D. 1882, at 12 o'clock noon, at the court-house door, at The Dalles, in the county of Wasco, State of Oregon, offered for sale at public auction, and subject to confirmation by the said county court of Wasco County, the portion of the said real estate situated in the said county of Wasco, and specified and described in said order and license of sale, as aforesaid; and at such sale the said parties of the second part became the purchasers of the whole of the said real estate hereinafter particularly described, situated in Wasco County aforesaid, for the sum of $57,500, they being the highest and best bidders, and that being the highest and best sum bid for the same; and

Whereas the said county court of Wasco County, upon a due and legal return of her proceedings under the said order and license of sale made by the said party of the first part on the 24th day of February, 1882, did on the 6th day of March, A. D. 1882, make an order confirming the said sale, and directing conveyances to be made, executed, and delivered to the said parties of the second part, and which order of confirmation, now on file and of record in the said county court of Wasco County, is hereby referred to and made a part of this indenture;

Now, therefore, the said Eleanor Martin, the guardian of the persons and estates of the said minors, James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, as aforesaid, the party of the first part, pursuant to the order last aforesaid of the said county court of Wasco County, for and in consideration of the said sum of $57,500 to her in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said parties of the second part, their heirs and assigns forever, all the right, title, interest, and estate of the said James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, in and to all that part of the lands known as The Dalles military road lands which are situate, lying, and being in the county of Wasco, State of Oregon, the said Dalles military road lands being the alternate sections of the public lands of the United States as surveyed, or to be surveyed, by the United States, designated by odd numbers, to the extent of three sections in width on each side of the military road constructed by The Dalles military road Company from Dalles City, on the Columbia River, to Fort Boise, on the Snake River, and including such lieu lands as have been or may hereafter be selected and located, not exceeding 10 miles in distance from said
14 road, under and in pursuance of the act of Congress entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," passed February 25, 1867, and any other acts of Congress, and the acts of the legislative assembly of the State of Oregon, relating or pertaining to the said Dalles military road lands, saving and excepting those portions of the Dalles military road lands which have been heretofore lawfully sold and conveyed by the said Dalles Military Road Company to other persons than Edward Martin, and by said Edward Martin, in his life-time, the said lands so previously conveyed not being included in this sale and conveyance, which said lands are listed in part only, and amount to 247,230 acres, more or less. The interest of said minors in and to the above-mentioned and designated lands so sold is five-

eighths of three-fourths thereof, subject to the right of dower therein and thereto held by and belonging to Eleanor Martin, the widow of Edward Martin, deceased.

Together with the tenements, hereditaments, and appurtenances whatsoever to the same belonging or in anywise appertaining.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns, to their sole use, benefit, and behoof forever.

In witness whereof the said party of the first part, guardian as aforesaid, has hereto set her hand and seal the day and year first above written.

[SEAL.] ELEANOR MARTIN,
Guardian of the persons and estates of James V. Martin, Geneviere Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors.

Signed, sealed, and delivered in the presence of—
T. P. BEACH.
SAM'L S. MURFEY.

STATE OF CALIFORNIA,
City and county of San Francisco, ss:

On this 22d day of March, A. D. 1882, personally came before me, Samuel S. Murfey, a commissioner of deeds for the State of Oregon, residing at the city and county of San Francisco, State of California, Eleanor Martin, guardian of the persons and estate of James Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, to me personally known to be the identical person described in and who executed the foregoing deed, and who acknowledged to me that she executed the same as guardian aforesaid freely, for the uses and purposes therein named.

In witness whereof I have hereunto set my hand and affixed my official seal this 22d day of March, A. D. 1882.

[SEAL.] SAM'L S. MURFEY,
Commissioner of Deeds for the State of Oregon.

STATE OF OREGON,
County of Wasco, ss:

I, George H. Thompson, county clerk in and for said Wasco County and ex officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from Eleanor Martin, guardian, etc., to Peter Donahue and James Phelan, bearing date March 21, 1882, as the same now appears of record at pages 82, 83, and 84, volume "H," records of deeds for Wasco County, Oregon, now in my office and custody, and that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this 3d day of September, 1887.

[SEAL.] GEORGE H. THOMPSON,
Clerk.

By J. M. HUNTINGTON,
Deputy Clerk.

15 EXHIBIT C.

Certified copy of deed. James Phelan and wife to Peter Donahue. Dated August 3, 1882.

[Filed for record on September 13, 1882.]

This indenture, made this 3d day of August, A. D. 1882, by and between James Phelan and Alice Phelan, his wife, both of the city and county of San Francisco, State of California, the parties of the first part, and Peter Donahue, of the same place, the party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of $71,625, lawful money of the United States, to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey, unto the said party of the second part all the right, title, and interest of the parties of the first part in and to the lands known as The Dalles Military Road lands, which are situate, lying, and being in the counties of Wasco, Grant, and Baker, State of Oregon; the said Dalles Military Road lands being the alternate sections of the public lands of the United States, as surveyed or to be surveyed by the United States, designated by odd numbers, to the extent of three sections in width on each side of the military road constructed by The Dalles Military Road Company from Dalles City, on the Columbia River, to Fort Boise, on the Snake River, and including such lieu lands as have been, or may hereafter be, selected and located, not exceeding 10 miles in distance from said road, under and in pursuance of the act of Congress entitled, "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," passed February 25, 1867, and any other acts of Congress, and the acts of the legislative assembly of the State of Oregon relating or pertaining to the said Dalles Military Road lands, saving and excepting those portions of the said Dalles Military Road lands which have been heretofore lawfully sold and conveyed by the said Dalles Military Road Company to other persons than Edward Martin and by said Edward Martin in his life-time, the said lands so previously conveyed not being included in this sale and conveyance.

The lands hereby conveyed being all and singular the property and premises conveyed to the said James Phelan, one of the parties of the first part, by Eleanor Martin, guardian of James V. Martin, Genevieve Martin, Peter D. Martin, Walter S. Martin, and Andrew D. Martin, minors, by three deeds, each bearing date the 21st day of March, A. D. 1882, and recorded, respectively, as follows:

In Wasco County, on the 5th day of April, 1882, in volume H of deeds, page 82.

In Grant County, on the 22d day of April, 1882, in volume E of deeds, pages 9 and 12.

In Baker County, on the 3d day of April, 1882, in volume 9 of deeds, page 150.

Together with the tenements, hereditaments, and appertenances whatsoever to the same belonging or in any wise appertaining.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit, and behoof forever.

In witness w'ereof the said parties of the first part have hereunto set their hands and seals the days and year first above written.

JAMES PHELAN. [SEAL.]
MRS. ALICE PHELAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
SAM'L S. MURFEY,
WM. B. LATHAM,
As to the signature of James Phelan.
EDWIN F. COREY,
JOHN B. SIMPSON,
As to Alice Phelan.

16 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 3d day of August, A. D. 1882, personally came before me, Samuel S. Murfey, a commissioner of deeds for the State of Oregon, resident in the city and county of San Francisco, State of California, the within-named James Phelan, to me personally known to be one of the identical persons described in and who executed the within instrument, and acknowledged to me that he executed the same freely, for the uses and purposes therein named.

Witness my hand and official seal as such commissioner this 3d day of August, A. D. 1882.

[SEAL.] SAM'L S. MURFEY,
Commissioner of Deeds for the State of Oregon in the State of California.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 12th day of August, in the year 1882, before me, the undersigned, Edwin F. Corey, a commissioner resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Oregon to take acknowledgments of deeds, etc., to be used or recorded therein, personally appeared Alice Phelan, wife of James Phelan, to me personally known to be the identical person described in and who executed the within instrument, and acknowledged to me, on an examination separate and apart from her husband, that she executed the same freely, and without fear or compulsion from any one, for the uses and purposes therein named.

Given under my hand and official seal the day and year last aforesaid.

[SEAL.] EDWIN F. COREY,
Commissioner for the State of Oregon, office 54 Wall Street, N. Y.

STATE OF OREGON, *County of Wasco, ss:*

I, George H. Thompson, county clerk in and for said Wasco County, and ex-officio clerk of the county court of the State of Oregon for the

county of Wasco, do hereby certify that I have compared the foregoing with the original deed from James Phelan and wife to Peter Donahue, and bearing date August 3d, 1882, as the same now appears of record at pages 275, 276, and 277, of volume "H," records of deeds for Wasco County, Oregon, now in my office and custody, and that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of court this 3d day of September, 1887.

GEORGE H. THOMPSON, *Clerk*,
[SEAL.] By J. M HUNTINGTON,
Deputy Clerk.

17 EXHIBIT D.

Certified copy of deed, Peter Donahue et als. to Eastern Oregon Land Company, dated August 11, 1884.

[Filed October 15, 1884, at 10:30 a. m.]

This indenture, made and entered into this 11th day of August, A. D. 1884, by and between Peter Donahue and Annie Donahue, his wife, D. V. B. Henarie and Mary A. Henarie, his wife, Eleanor Martin, T. J. Martin and Margaret A. Martin, his wife, of the city and county of San Francisco, State of California, and James V. Martin, of the city and county of Los Angeles, State aforesaid, and Thomas S. Martin and Ada B. Martin, his wife, and Edward Martin, of the city of Portland, State of Oregon, and Barton L. Walker and Genevieve E. Walker, his wife, of the city of Washington, District of Columbia, parties of the first part, and the Eastern Oregon Land Company, a corporation duly organized and incorporated under the laws of the State of California, and having its office and principle place of business in the city and county of San Francisco, the party of the second part, witnesseth:

Whereas the said parties of the first part are the owners of, and have each an undivided interest in common in, the lands hereinafter mentioned and described in the respective proportions following, to wit:

The said Peter Donahue, three-sixteenths; the said D. V. B. Henarie, four-sixteenths; the said Eleanor Martin, four-sixteenths; the said P. J. Martin, one-sixteenth; the said James V. Martin, one sixteenth; the said Thomas S. Martin, one-sixteenth; the said Edward Martin, one-sixteenth; and the said Genevieve E. Walker, one-sixteenth. And whereas the said parties of the first part have negotiated with the said party of the second part for the sale of the said lands upon the terms which have been mutually agreed upon by and between the several and respective parties hereto of the first and second parts.

Now, therefore, in consideration of the premises and of the sum of one dollar, lawful money of the United States of America, to each of them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said parties of the first part have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto said party of the second part, its successors and assigns, all those certain lands situate, lying, and being in the counties of Wasco, Grant, and Baker, State of Oregon, granted to the State of Oregon

by the act of Congress of the United States of America entitled "An act granting lands to the State of Oregon to aid in the construction of a military wagon road from Dalles City, on the Columbia River, to Fort Boise, on the Snake River," approved February 25, A. D. 1867, and granted to the said Dalles Military Road Company by an act of the legislative assembly of the State of Oregon entitled "An act donating lands to The Dalles Military Road Company," approved October 20, 1868.

Being the lands conveyed to Edward Martin, now deceased, by the said The Dalles Military Road Company by its deed bearing date May 31, 1876, and duly recorded in the office of the county clerk of the said county of Wasco on the 31st day of May, A. D. 1876, in volume E, page 435, and in the office of the county clerk of the said county of Grant on the 3d day of June, A. D. 1876, in book C, page 195, and in the office of the county clerk of the said county of Baker on the 7th day of June, A. D. 1876, in book D of deeds, page 200, and commonly known and designated as The Dalles Military Road lands, a portion of which lands are embraced in the county of Crook, recently formed, or about to be formed, of and from a portion or portions of said Wasco and Grant Counties.

18 Saving and excepting therefrom and from the operation of this conveyance certain portions and parcels of said Dalles military road lands heretofore sold and conveyed by the said Edward Martin, grantee thereof as aforesaid, in his lifetime, and by his successors in interest.

The several and respective interests of the several and respective parties of the first part by them respectively herein and hereby conveyed being subject to the proper and respective proportions of the debts, charges, and expenses belonging thereto respectively.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said parties of the second part, its successors and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

P. DONAHUE.	[SEAL.]	JAS. V. MARTIN.	[SEAL.]
ANNIE DONAHUE.	[SEAL.]	THOS. S. MARTIN.	[SEAL.]
D. V. B. HENARIE.	[SEAL.]	ADA B. MARTIN.	[SEAL.]
MARY A. HENARIE.	[SEAL.]	EDWARD MARTIN.	[SEAL.]
ELEANOR MARTIN.	[SEAL.]	BARTON L. WALKER.	[SEAL.]
P. J. MARTIN.	[SEAL.]	GENEVIEVE E. WALKER.	[SEAL.]
MARGARET A. MARTIN.	[SEAL.]		

Signed, sealed, and delivered in the presence of—

A. Maude Henarie and Eugene W. Levy, as to the signature of Mary A. Henarie.

Annie Martin and Eugene W. Levy, as to signature of Margaret A. Martin.

Eugene W. Levy and Charles T. Stanley, as to signatures of P. Donahue and Annie Donahue.

Eugene W. Levy and T. P. Beach, as to signature of D. V. B. Henarie.

Eugene W. Levy and T. P. Beach, as to signature of Eleanor Martin.

Eugene W. Levy and T. P. Beach, as to signatures of P. J. Martin and James V. Martin.

Eugene W. Levy and Charles T. Stanley, as to signature of Edward Martin.

Eugene D. White, Arthur E. Sloan, witnesses to signature of Thomas S. Martin.

Eugene D. White and Arthur E. Sloan, witnesses to signature of Ada B. Martin.

Witnesses to signatures of Barton L. Walker and Genevieve E. Walker, John E. Beal, Albert D. Gilme.

STATE OF OREGON, *County of Multnomah, ss:*

Be it remembered that on this 18th day of August, 1884, before me, the undersigned, a notary public in and for said county and State, personally appeared the within-named Thomas S. Martin and Ada B. Martin, who are known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same; and Ada B. Martin, wife of the said Thomas S. Martin, on an examination made by me separate and apart from her husband, acknowledged to me that she executed the same freely and voluntarily, and without fear, coercion, or compulsion from any one.

In testimony whereof I have hereunto set my hand and notarial seal the day and year last above written.

[SEAL.] EUGENE D. WHITE,
Notary Public for Oregon.

19 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared James V. Martin and Edward Martin, to me personally known to be the identical persons whose names are subscribed to, who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared Peter Donahue and Annie Donahue, his wife, to me personally known to be the identical persons whose names are subscribed to, who are described in, and who executed the an-

nexed and within instrument, and they severally and duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Annie Donahue, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 11th day of August, 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared D. V. B. Henarie and Mary A. Henarie, his wife, to me personally known to be the identical persons whose names are subscribed to, and who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Mary A. Henarie, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this 11th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned and sworn, and residing in the city and county of San Fran-
20 cisco, State of California, personally appeared P. J. Martin and Margaret A. Martin, his wife, to me personally known to be the identical persons whose names are subscribed to, who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Margaret A. Martin, on examination separate and apart from her husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On the 25th day of August, A. D. 1884, before me, Eugene W. Levy, a commissioner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco,

State of California, personally appeared Eleanor Martin (widow), to me personally known to be the identical person whose name is subscribed to, who is described in, and who executed the annexed and within instrument, and she duly acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] EUGENE W. LEVY,
Commissioner of Deeds for the State of Oregon in California.

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

On the 12th day of September, A. D. 1884, before me, John E. Beall, a commissioner of deeds for the State of Oregon in and for the District of Columbia, duly appointed, commissioned, and sworn, and residing in the city of Washington, D. C., personally appeared Barton L. Walker and Genevieve E. Walker, his wife, to me personally known to be the identical persons whose names are subscribed to, and who are described in, and who executed the annexed and within instrument, and they severally duly acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned; and the said Genevieve E. Walker, on examination separate and apart from her said husband, duly acknowledged to me that she executed the same freely and without fear or compulsion from any one.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] JOHN E. BEALL,
Commissioner of Deeds for the State of Oregon in and for the District of Columbia.

STATE OF OREGON, *County of Wasco, ss:*

I, George H. Thompson, county clerk in and for said Wasco County, and ex-officio clerk of the county court of the State of Oregon for the county of Wasco, do hereby certify that I have compared the foregoing with the original deed from Peter Donahue et al. to the Eastern Oregon Land Company, and bearing date August 11, 1884, as the same now appears of record at pages 119, 120, 121, 122, 123, and 124 of volume "J," records of deeds for Wasco County, Oregon, now in my office and custody, and that it is a true and correct transcript therefrom and of the whole of said original deed.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 2d day of September, 1887.

GEORGE H. THOMPSON, *Clerk.*
[SEAL.] By J. M. HUNTINGTON,
Deputy Clerk.

21 *Eastern Oregon Land Company to Matilda C. Rogers, adm'tx in trust for est. of Alex. Rogers, dec'd.*

[Filed July 18, at 2.50 p. m., 1889.]

This indenture, made the eighth day of July, in the year one thousand eight hundred and eighty-nine, between the Eastern Oregon Land Com-

pany, a corporation duly incorporated under the laws of the State of California, and having its office at the city and county of San Francisco, State of California, the party of the first part, and Matilda C. Rogers, of Wasco County, State of Oregon, administratrix in trust for the estate of Alex. Rogers, deceased, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of thirty-six hundred and eighty-two and $\frac{47}{100}$ dollars, gold coin of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to her heirs and assigns forever, all that certain lot, tract, piece, or parcel of land situate, lying and being in the county of Wasco, State of Oregon, known and described as follows, to wit:

All of section No. twenty-one, the north half and southeast quarter of section No. twenty-three; all of section No. twenty-five; the northwest quarter and southeast quarter of section No. twenty-seven, and the northwest quarter of section No. thirty-five, all in township No. seven
22 south, range No. seventeen east, W. M.; also all of section No. three, in township No. eight south, of range No. seventeen east, Willamette meridian, containing, according to the U. S. Government surveys, 288 $\frac{98}{100}$ acres.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns forever. And the said party of the first part does hereby covenant and agree to and with the said party of the second part, her heirs, executors, administrators, and assigns that it has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the said premises, or any part or parcel thereof, now are or at any time hereafter shall or may be impeached, charged or incumbered, in any manner or way whatsoever.

And the said party of the first part does hereby covenant to and with the said party of the second part her heirs and assigns, that it will warrant and defend the title to the above granted premises against the lawful claims and demands of all persons whatsoever.

In witness whereof the said party of the first part has caused these presens to be signed in its corporate name by its president and secretary and the corporate seal to be hereunto affixed, the day and year first above written.

[SEAL.] EASTERN OREGON LAND COMPANY,
By D. V. B. HENARIE, *President.*
T. P. BEACH, *Secretary.*

Signed, sealed, and delivered in the presence of—
G. G. BIDLEMAN.
JAMES L. KING.

23 STATE OF CALIFORNIA,
City and county of San Francisco, ss:

On the eighth day of July, one thousand eight hundred and eighty-nine, before me, James L. King, a commissoner of deeds for the State of Oregon, duly appointed, commissioned, and sworn, and residing in the city and county of San Francisco, State of California, personally appeared D. V. B. Henarie, the president, and T. P. Beach, the secretary of the Eastern Oregon Land Company, to me personally known to be the identical persons whose names are subscribed to the foregoing instrument as the president and secretary, respectively, of the Eastern Oregon Land Company, and they each severally duly acknowledged to me that they executed the same as the president and secretary respectively of said company, and on behalf and in the corporate name as the president and secretary, as its free and voluntary act and deed for the uses and purposes therein mentioned; and that they had affixed thereto the corporate seal of said company, in pursuance of the order and resolution of said company, directing such deed to be executed by them by signing the same in its corporate name as president and secretary thereof and affixing thereto its corporate seal.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] JAMES L. KING,
Commissioner of Deeds for the State of Oregon in California.

24 STATE OF OREGON, *County of Wasco, ss:*

I, Geo. N. Thompson, county clerk in and for Wasco County, State of Oregon, and ex-officio clerk of the county court, do hereby certify that I have carefully compared the foregoing with the original deed from Eastern Oregon Land Company to Matilda C. Rogers, administratrix, in trust for estate of Alex. Rogers, deceased, dated July 8, 1889, as the same now appears of record at pp. 314, 315, and 316, Vol. O, records of deeds for said Wasco County, in my office and custody, and that it is a true and correct transcript therefrom, and of the whole of said original.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 28 day Aug., A. D. 1889.

[SEAL.] GEO. N. THOMPSON, *Clerk.*
By J. M. HUNTINGTON, *Deputy.*

(Endorsed:) Filed Aug. 30, 1889. R. H. Lamson, clerk.

25 And afterwards, to wit, on the 30' day of August, 1889, there was issued out of said court a subpœna ad respondendum, in words and figures, as follows, to wit:

26 *Return of civil process.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 2' day of September, 1889, at Antelope, Wasco County, in said district, I duly served the within copy of sub. ad res. upon the therein-named Matilda C. Rogers, administratrix, and by

delivering to her personally a true copy of said sub. ad res., duly certified to by me as U. S. marshal, together with a copy of the complaint in the within-entitled cause, duly certified to by the clerk of the U. S. circuit court for said district.

JOHN MYERS,
United States Marshal.
By W. W. ROBERTS,
Deputy.

27 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, COMPLAINANT,
vs.
MATILDA C. ROGERS, ADMINISTRATRIX OF THE estate of Alexander Rogers, deceased, defendant. } No. 1633. In equity.

Subpœna ad respondendum.

The President of the United States of America to Matilda C. Rogers, administratrix of the estate of Alexander Rogers, deceased, greeting:

You and each of you are hereby commanded that you be and appear in said circuit court of the United States, at the court-room thereof, in the city of Portland, in said district, on the first Monday of October next, which will be the 7' day of October, A. D. 1889, to answer the exigency of a bill of complaint exhibited and filed against you in our said court, wherein the United States is complainant and you are defendant, and further to do and receive what our said circuit court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said district, or your deputy, to make due service of this, our writ of subpœna, and to have then and there the same.

Hereof fail not.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, affixed at Portland, in said district, this 30 day of August, in the year of our Lord one thousand eight hundred and 89, and of the Independence of the United States the one hundred and ——

[SEAL.]

R. H. LAMSON,
Clerk.
By R. B. LAMSON,
Deputy Clerk.

Memorandum pursuant to equity rule No. 12 of the Supreme Court of the United States:

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken pro confesso.

(Indorsed:) No. 1633. In the circuit court of the United States for the district of Oregon. In equity. The United States vs. Matilda C.

Rogers, administratrix. Subpœna ad respondendum. Returned and filed September 7, 1889. R. H. Lamson, clerk; by D. W. Stevens, deputy clerk.

28 And afterwards, to wit, on the 7th day of Oct., 1889, there was duly filed in said court an appearance, in words and figures, as follows, to wit:

29 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES
vs.
MATILDA C. ROGERS, ADMINISTRATRIX OF the estate of Alexander Rogers, deceased. } No. 1633.

To the clerk of the above-entitled court:

You will please enter my appearance as solicitor in the above-entitled cause for the defendant, Matilda C. Rogers, administratrix.

J. C. MORELAND,
Sol. for Matilda C. Rogers, Adm'x.

(Indorsed:) No. 1633. In the circuit court of the United States for the district of Oregon. The United States vs. Matilda C. Rogers, administratrix. Præcipe for appearance of defendant. Filed and entered Oct. 7, 1889. R. H. Lamson, clerk. By D. W. Stevens, deputy.

30 And afterwards, to wit, on the 23d day of October, 1889, there was duly filed in said court exceptions to bill, in words and figures, as follows, to wit:

31 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES
against
MATILDA C. ROGERS, ADMINISTRATRIX OF the estate of Alexander Rogers, deceased. } —

Exceptions taken by the defendant, Matilda C. Rogers, administratrix of the estate of Alexander Rogers, deceased, to the bill of complaint of the plaintiff.

This defendant excepts to all the parts of said bill herein described as being matters not material to said suit, and which cannot aid the plaintiff in obtaining relief sought by said bill, and prays that the same may be expunged with costs, to wit:

First exception. For that said bill is imper*tenant* from and after the word "effect" in the third line of the third paragraph thereof, to the end of said paragraph.

Second exception. For that said bill is imper*'enant* from and after the word "same" in the four' line of the eighth paragraph thereof, to the end of said paragraph.

Third exception. For that said bill is impertenant in the fifteenth paragraph by containing the words "and maintained" in the eighteenth line thereof, and the words "or maintained" in the forty-fifth and forty-sixth lines of said paragraph, and the words "or maintained" in the fifty-fourth and fifty-fifth lines thereof.

J. C. MORELAND,
W. Y. MASTERS,
E. B. DUFER,
Solicitors for Defendant.

32 UNITED STATES OF AMERICA,
State of Oregon, County of Multnomah, ss:

Due service of the within exceptions is hereby accepted, at Portland, Oregon, this —— day of October, 1889, by receiving a copy thereof, duly certified to as such by W. Y. Masters, counsel for defendants.

L. L. MCARTHUR,
Atty. for.

(Endorsed:) Filed Oct. 23, 1889. R. H. Lamson, clerk.

33 And afterwards, to wit, on Wednesday, the 9 day of April, 1890, the same being the 104th judicial day of the regular October term of said court. Present, the honorable Matthew P. Deady, United States district judge, presiding, the following proceedings were had in said case, to wit:

34 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES
vs.
MATILDA C. ROGERS, ADMINISTRATRIX. } No. 1633.

APRIL 9, 1890.

Now at this day this cause is submitted to the court upon the exceptions to the bill for impertenance, the plaintiff appearing by Mr. F. P. Mays, United States attorney, and the defendant by Mr. J. C. Moreland, of counsel. On consideration whereof,

It is ordered and adjudged that said exceptions be and the same are hereby allowed.

35 And afterwards, to wit, on the 30th day of April, 1890, there was duly filed in said court a demurrer to bill, in words and figures as follows, to wit:

36 In the circuit court of the United States for the district of Oregon.

Demurrer of Matilda C. Rogers, administratrix of the estate of Alexander Rogers, deceased, to the bill of complaint of the United States by W. H. H. Miller, Attorney-General of the United States, against the defendant in chancery exhibited.

This defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained, to

be true in manner and form as the same is therein set forth, doth demur thereto, and for cause of demurrer show:

That the saith complainant hath not, in and by his said bill, stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby saught and prayed for from or against this defendant.

2. That the heirs of said Alexander Rogers, deceased, in the said bill of complaint named, is by the complainant's own showing a proper and necessary party to any suit which may be brought against defendant in this court, touching any of the pretended matters of equity charged in said bill.

Wherefore and for divers other errors and imperfections this defendant demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained; and prays to be hence dismissed with his reasonable costs in this behalf sustained.

MORELAND & MASTERS,
Solicitors for Defendants.

37 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, J. C. Moreland, hereby certify that I am one of the defendant's solicitors and that in my opinion the foregoing demurrer is well founded in law.

J. C. MORELAND.

U. S. A.,
Dist. of Oregon, County of Mul'nomah, ss:

Due service of the within demurrer is hereby accepted, at Portland, Oregon, this 30 day of April, 1890, by receiving a copy thereof duly certified to as such by W. Y. Masters, counsel for deft.

FRANKLIN P. MAYS,
U. S. Dist. Attorney.

(Endorsed:) Filed April 30th, 1890. R. H. Lamson, clerk.

38 And afterwards, to wit, on Friday, the 2d day of May, 1890, the same being the 10th judicial day of the regular April term of said court. Present, the honorable Matthew P. Deady, United States district judge, presiding, the following proceedings were had in said case, to wit:

39 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES *vs.* MATILDA C. ROGERS, ADMINISTRATRIX of the estate of Alexander Rogers, deceased.	No. 1633.

MAY 2, 1890.

Now at this day this cause comes on to be heard upon the demurrer to the bill of complaint, the plaintiff appearing by Mr. Franklin P. Mays,

United States attorney, and the defendant by Mr. J. C. Moreland, of counsel. On consideration whereof, it is adjudged and decreed that said demurrer be and the same is hereby sustained, and that said bill of complaint be and the same is hereby dismissed.

DEADY, *J.*

Whereupon said complainant prays an appeal to the Supreme Court of the United States, which is allowed.

40 *Return of civil process.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 22 day of Sept., 1890, at Portland, Multnomah County, in said district, I duly served the within citation on appeal upon the therein named Matilda C. Rogers, administratrix of the estate of Alexander Rogers, deceased, by delivering to J. C. Moreland, one of the attorneys of record of the defendant in said cause, personally a true copy of said citation on appeal, duly certified to by me as U. S. marshal.

L. T. BARIN,
United States Marshal.
By O. P. MILLER,
Deputy.

41 UNITED STATES OF AMERICA,
District of Oregon, ss:

To Matilda C. Rogers, administratrix of estate of Alexander Rogers, deceased, greeting:

Whereas the United States has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of Oregon, in your favor, you are, therefore, hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. eighteen hundred and ninety, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this September 19, 1890.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Attest:

R. H. LAMSON, *Clerk.*
[SEAL.] By MAURICE MCKIM,
Deputy Clerk.

(Indorsed:) No. 1633. U. S. circuit court, district of Oregon. The United States vs. Matilda C. Rogers, adm't'x estate of Alexander Rogers, dec'd. Copy, citation on appeal. Filed , 188 , clerk. By , deputy clerk.

42 *Return of civil process.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that on the 22d day of Sept., 1890, at Portland, Multnomah County, in said district, I duly served the within citation on appeal, upon the therein-named Matilda C. Rogers, administratrix of the estate of Alexander Rogers, deceased, by delivering to J. C. Moreland, one of the attorneys of record of the defendant in said cause, personally, a true copy of said citation on appeal, duly certified to by me as U. S. marshal.

L. T. BARIN,
United States Marshal.
By O. P. MILLER,
Deputy.

43 UNITED STATES OF AMERICA,
District of Oregon, ss:

To Matilda C. Rogers, administratrix of the estate of Alexander Rogers, deceased, greeting:

Whereas the United States has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of Oregon, in your favor; you are, therefore, hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. eighteen hundred and ninety, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this September 19, 1890.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Attest:

R. H. LAMSON, *Clerk.*
[SEAL.] By MAURICE MCKIM,
Deputy Clerk.

Service of the within citation is hereby admitted this 19th day of September, 1890.

(Indorsed:) No. 1633. U. S. circuit court, district of Oregon. The United States vs. Matilda C. Rogers, administratrix of the estate Alexand. Rogers, deceased. Citation on appeal. Filed , 188 . , clerk. By , deputy clerk. Serve J. C. Moreland.

44 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon, do hereby certify that the writing hereto attached is a true and complete transcript of the record and proceedings in cause No. 1633, of the United States, against Matilda C. Rogers, administratrix of